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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR(CG)

W.P.No. . .26.8. . 2003.

Petitioner .. Vidya Vilas Shrivastava
aged 62 years S/o Shri Khem Lal Shrivastava
Retired Ayurved Chikitsa Adhikari,
Tumdibod, Distt. Rajnandgaon.

Versus

Respondent ..(1) State Govt. of Chhattisgarh
Public Health & Family Welfare Department
Through - The Secretary D.K.S. Bhavan
RAIPUR.

(2) Supdt.-cum-Distt. Ayurveda Adhikari
Rajnandgaon.

P.R. No. 15/1/03
Presented by Shri Ajay Shrivastava
dated 15/1/03

Writ petition under Article 226/227 of the Constitution of India.

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मामला क्रमांक W.P. 268/ **सन् 2003**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4-5-2005

Mr. Ajay Shrivastava, counsel for the petitioner.

Mr. Sandeep Dubey, Govt. Advocate for the State/respondents.

Heard both the counsel.

The petitioner, who is a retired Ayurved Chikitsa Adhikari, Tumdibod, District: Rajnandgaon, has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 22-7-2002 (Annexure P-1) passed by the Superintendent-cum-District Ayurved Adhikari, Rajnandgaon, whereby it was informed that the Health & Family Welfare Department of the Government vide its order dated 10-5-2002 has changed the date of retirement of the petitioner from 31-5-2001 to 31-5-2000, and also the order dated 10-5-2002 (Annexure P-2) whereby the Under Secretary, Health & Family Welfare Department, Govt. of Chhattisgarh, ordered that the date of retirement of the petitioner be treated as 31-5-2000 instead of 31-5-2001.

Brief facts leading to filing of this writ petition are that the petitioner entered into Government service in the Ayurved Department, and ultimately he retired from the post of Ayurved Chikitsa Adhikari on 31-5-2001 considering his date of birth as 25-5-1941. After the retirement, the State Government was informed that the actual date of birth of the petitioner is 1940, same has been changed and interpolated

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to 1941, and based on that the date of birth of the petitioner was changed to 25-5-1940 in place of 25-5-1941.

The case of the petitioner is that without giving him opportunity or without issuing show cause notice to him to prove and produce documents in order to prove his date of birth as 25-5-1941, same has been changed, therefore the action of the respondents is arbitrary. In the Matriculation certificate of the petitioner, his date of birth is written as 25-5-1941 and as also in the school leaving certificate issued in favour of the petitioner, date of birth of the petitioner is mentioned as 25-5-1941. On account of the said change, recovery has also been effected from the petitioner's gratuity, for the amount which he received on account of serving for one year more, considering his date of birth as 1941. Therefore, it has been prayed that these impugned orders (Annexures P-1 & P-2) be quashed and the respondents be directed to return the amount which has been recovered from the petitioner and interest may also be allowed to be paid to him.

Return has been filed on behalf of the State/respondents in which it has been mentioned that the date of birth of the petitioner was 25-5-1940, the same was manipulated to 25-5-1941, and the said correction is not certified by any authorized officer, which is evident from the photostat copy of the service book (Annexure R-1), which clearly indicates the manipulation of date of birth of the petitioner and it

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

amounts to misconduct under the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966. The writ petition of the petitioner deserves to be dismissed on the ground of delay also. The date of birth of the petitioner was manipulated by the petitioner and was corrected as 25-5-1941 in words as well as in figures, and that has not been authorized by any competent officer. The State Government has issued circular from time to time regarding correction of the date of birth. Therefore, the writ petition be dismissed.

I have perused the record. It is admitted position that in the first instance, the petitioner was allowed to continue in service till 31-5-2001 considering his date of birth as 25-5-1941, after his retirement, action was initiated in the month of December, and vide order dated 10-5-2002 i.e. after an year, the date of birth of the petitioner was changed from 25-5-1941 to 25-5-1940. In the return filed by the State/respondents, the defence taken by them is that the said date was manipulated by the petitioner as the same has not been certified by any authorized officer, but nothing has been brought on record to show that why the petitioner was allowed to continue in service till 31-5-2001 considering his date of birth as 25-5-1941. As per the Pension Rules, the pension case of an employee should be initiated two years before his retirement looking to the whole service record, then why before 2001 i.e. in 1999 or 2000 this manipulation was not detected. Even otherwise,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

nothing has been brought on record that what was the basis for reaching to the conclusion that the date of birth of the petitioner has been manipulated. No enquiry was conducted as to whether in fact the date of birth of the petitioner was manipulated, and if so, when it was manipulated, particularly, when the service record remains in the possession of the State Government, and in this connection, no officer was examined by conducting enquiry to prove that when this date of birth was changed. There is nothing on record which shows that how the petitioner was able to reach to the record and change his date of birth.

Therefore, without conducting an enquiry the date of birth of the petitioner was changed without giving him opportunity, the whole action of the State Government is prejudicial to the petitioner, and the same could not have been done on the back of the petitioner. I am fortified in my view by the judgment of the Apex Court in the matter of **Sarjoo Prasad v. The General Manager and another** reported in **AIR 1981 SC 1481**, in which the Apex Court held that "*the date of birth without notice and without giving opportunity to the appellant cannot be altered to the disadvantage and prejudice of an employee because an administrative order which involves civil consequences must be made in conformity with the rule of natural justice which at its lowest minimum requires notice and opportunity to the person affected thereby*".

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Apart from that the petitioner has placed on record the duplicate copy of the Secondary School Certificate Examination, 1958 (Annexure PR-3) which was obtained by the petitioner on 29th July, 1998, i.e. before his retirement. Perusal of Annexure PR-3 clearly reveals that in words as well as in figures the date of birth of the petitioner is written as 25-5-1941. The school leaving certificate issued by the Government Multipurpose Higher Secondary School, Rajnandgaon, has also been placed on record which was issued on 21-4-1981, and in this school leaving certificate also in figures as well as in words, the date of birth of the petitioner has been shown as 25-5-1941. Therefore, in presence of these documents as well as that the date of birth of the petitioner was changed detrimental to the petitioner without giving him any opportunity, that too without conducting any enquiry, the whole action of the respondents suffers from vice of arbitrariness and also the principles of natural justice.

In the result, the petition of the petitioner deserves to be allowed and the same is allowed. The order impugned dated 10-5-2002 and the consequential order dated 22-7-2002 are quashed. The petitioner is entitled to all benefits which have been recovered from him as a consequence of issuance of the impugned orders.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Soma 13-05 10-5-07 Rs 1.00